

Robert W. Boatman (009619)
Paul L. Stoller (016773)
Shannon L. Clark (019708)
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
rwb@gknet.com
paul.stoller@gknet.com
SLC@gknet.com

Ramon Rossi Lopez (CA Bar No. 86361)
(admitted *pro hac vice*)
LOPEZ McHUGH LLP
100 Bayview Circle, Suite 5600
Newport Beach, California 92660
rlopez@lopezmchugh.com
Co-Lead/Liaison Counsel for Plaintiffs

James R. Condo (#005867)
Amanda C. Sheridan (#027360)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Telephone: (602) 382-6000
E-Mail: jcondo@swlaw.com
asheridan@swlaw.com

Richard B. North, Jr. (admitted *pro hac vice*)
Georgia Bar No. 545599
Matthew B. Lerner (admitted *pro hac vice*)
Georgia Bar No. 446986
Nelson Mullins Riley & Scarborough, LLP
201 17th St. NW, Suite 1700
Atlanta, GA 30363
richard.north@nelsonmullins.com
matthew.lerner@nelsonmullins.com
*Attorneys for Defendants C. R. Bard, Inc.
and Bard Peripheral Vascular, Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In re Bard IVC Filters Products
Liability Litigation

NO. MD-15-02641-PHX-DGC

**THE PARTIES' JOINT STATUS
REPORT AND PROPOSED AGENDA
FOR THE MARCH 31, 2016 CASE
MANAGEMENT CONFERENCE**

1 In accordance with Paragraph XVI of Case Management Order No. 8 [Doc. 519],
2 the Parties hereby submit their Joint Status Report and proposed agenda for the March 31,
3 2016 Case Management Conference.

4 **I. Status Reports**

5 A. Progress on Preliminary Discovery on ESI

6 On March 18, 2016, the parties filed a Joint Motion to Extend Certain Deadlines in
7 Case Management Order No. 8 Relating to Document and ESI Discovery and Previously
8 Searched and New Custodians. [Doc. 1151.] Leading up to that filing, on February 26,
9 2016, Defendants served interrogatory responses as required by Sections III(B) and IV of
10 Case Management Order No. 8 (“CMO 8”). Defendants also served an interrogatory
11 response relating to their corporate structure at the same time. On March 18, 2016,
12 Plaintiffs took a Rule 30(b)(6) deposition of a designated representative regarding
13 Defendants’ corporate structure. The parties have scheduled an interview on April 15 of a
14 designated witness regarding Defendants’ overall information systems and a Rule 30(b)(6)
15 deposition on April 27 of a designated witness on the information systems for those
16 entities and departments identified as likely to have information relating to IVC filters.

17 As set forth in the parties’ joint motion, they will meet and confer after the
18 foregoing events and address any outstanding disputes in a joint filing (as set forth in
19 CMO 8) by May 16, 2016.

20 B. Scheduling of Depositions

21 The parties have scheduled the depositions of three individuals: Dr. Murray Asch
22 (May 2, 2016), Chris Ganser (June 7, 8, or 9), and John DeFord (June 2).

23 On March 10, 2016, Plaintiffs requested defense counsel to provide them
24 deposition dates for 14 witnesses (including Messrs. Ganser and DeFord), primarily
25 current and former employees of Defendants. Defendants have objected to the deposition
26 of Brian Barry, and the parties currently are in the process of addressing that dispute.

27 The parties are in the process of scheduling the depositions for the remaining 12
28 witnesses.

1 C. Mature Cases

2 On March 1, 2016, the parties filed a Stipulation Regarding Status of Mature
3 Cases. [Doc. 914.] The parties will be prepared to address any questions the Court may
4 have regarding the mature cases, including the three cases the parties recommend be
5 removed from the list of “mature cases” for early remand.

6 D. Privilege Log Issues

7 On February 12, 2016, the parties filed a Supplemental Joint Report on Privilege
8 Log Efforts. [Doc. 705.] Therein, the parties outlined a process for the sampling and
9 review of entries on Defendants’ privilege logs. On March 4, 2016, the parties filed a
10 Second Supplemental Joint Report on Privilege Log Efforts. [Doc. 984.] Therein, they
11 provided an update to the Court on the efforts to resolve issues with respect to
12 Defendants’ privilege logs.

13 E. Parties’ Proposed Bellwether Process

14 On March 1, 2016, the parties filed a Stipulation of the Parties regarding the
15 Bellwether selection process. [Doc. 923.] Therein, the parties have proposed a process
16 for the selection of Bellwether cases.

17 F. Parties’ Submission Regarding Fact Sheets

18 On March 18, 2016, the parties submitted a Stipulation and Filing Regarding
19 Proposed Procedure for Party Fact Sheets. [Doc. 1153.]

20 G. Briefed Discovery Issues

21 The parties have briefed and will be prepared to address the following issues:

22 1. Scope of Discovery: FDA Inspections and Warning Letter/Recovery
23 Cone

24 On February 11, 2016, the parties filed simultaneous memoranda addressing the
25 relevancy and discoverability of FDA inspection and warning letter information and the
26 Recovery Cone Removal System. Plaintiffs’ filing is doc. 697; Defendants’ filing is doc.
27 693. On February 18, 2016, Defendants filed a Notice of New Evidence Regarding
28 Clearance. [Doc. 850.] On March 4, 2016, Defendants filed a Notice of Supplemental

Information Regarding FDA Inspection and Warning Letter. [Doc. 989.] On March 18, 2016, Plaintiffs filed a Response to Defendants filed a Notice of Supplemental Information Regarding FDA Inspection and Warning Letter. [Doc. 1152.]

2. Scope of Discovery: Simon Nitinol Filter

On March 21, 2016, the parties filed a Submission Re: Discovery About the Simon Nitinol Filter. [Doc. 1161.] Therein, in a matrix format in accordance with CMO 8, the parties submitted their positions regarding the Plaintiffs' requests for documents and information relating to the Simon Nitinol Filter.

H. Deposition Protocol

The parties are negotiating the terms of a potential deposition protocol as a case management order and hope to have a stipulated proposed order filed in advance of the March 31 Case Management Conference or soon thereafter.

I. Process for Early Consideration of Equitable Tolling

On March 18, 2016, Defendants filed a submission regarding the Court's early consideration of Plaintiffs' claim to equitable tolling due to fraudulent concealment. [Doc. 1146.] Plaintiffs' response to that filing is due on April 4 – after the next Case Management Conference. Plaintiffs contend this matter is not yet ripe for adjudication and intend to respond in due course to Defendants' filing.

II. Proposed Agenda

- A. Scope of discovery issues – FDA issues and Simon Nitinol Filter
- B. Status of deposition discovery
- C. Deposition protocol
- D. Bellwether process & Party Fact Sheets
- E. State court litigation
- F. Defendants' request with respect to early consideration of equitable tolling
- G. Any Questions from the Court (re: submissions on ESI, privilege log process, and mature cases)

DATED this 25th day of March 2016.

ATTORNEYS FOR PLAINTIFFS

ATTORNEYS FOR DEFENDANTS

/s/ Robert W. Boatman
Ramon R. Lopez (admitted pro hac vice)
Lopez McHugh LLP
100 Bayview Circle, Suite 5600
Newport Beach, CA 92660

Robert W. Boatman
Paul L. Stoller
Gallagher & Kennedy PA
2575 E Camelback Road, Suite 1100
Phoenix, AZ 85016-9225

Co-Lead/Liaison Counsel for Plaintiffs

/s/ Richard B. North
James R. Condo
Amanda C. Sheridan
Snell & Wilmer
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202

Richard B. North, Jr. (admitted pro hac vice)
Nelson Mullins Riley & Scarborough
LLP
201 17th St. NW, Suite 1700
Atlanta, GA 30363

Attorneys for Defendants
C. R. Bard, Inc. and Bard Peripheral
Vascular, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Gay Blakesley

5336048v3/26997-0001